IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

AS.No. 614 of 1994()

AGAINST THE JUDGMENT AND DECREE IN O.S.NO.760 OF 1990 DATED 30.7.1993 IN THE COURT OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.

APPELLANT: PLAINTIFF:

NOBLE FINANCE, A REGISTERED PARTNERSHIP FIRM,
REPRESENTED BY MANAGING PARTNER
M.N.BHASKARAN NAIR, MANIMANDIRAM,
MARYATHURUTHU KARA, AYMANAM VILLAGE.

BY ADV. SRI.K.JAGADEESCHANDRAN NAIR

RESPONDENTS: DEFENDANTS:

1. OMANA SHANMUGHAM, MOTHIRAPPALLIL HOUSE,
KUMARANALLOOR, PERUMBAIKADU VILLAGE.

2. ANURAG, D/O.SHANMUGHAM, MOTHIRAPPALLIL HOUSE,
KUMARANALLOOR, PERUMBAIKADU VILLAGE.

3. SHANMUGHAM ABHILASH OF -DO- -DO-

4. SHANMUGHAM AJEESH OF -DO- -DO-

(RESPONDENTS 2 TO 4 ARE MINORS REPRESENTED
BY THE FIRST RESPONDENT)

BY ADV. SRI.T.R.HARIKUMAR
SRI.V.G.ARUN.

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 31/1/2007, THE COURT ON 01/02/2007 DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

A.S.NO. 614 OF 1994

Dated this the 1st day of February,2007

JUDGMENT

The plaintiff in O.S.No.760 of 1990, on the file of the Court of the Additional Subordinate Judge of Kottayam is the appellant. The suit was filed by the appellant for realisation of money on the basis of Ext.A1 promissory note allegedly executed by Shanmugham, the predecessor in interest of the defendants. It is stated in the plaint that the promissory note dated 21.11.1987 was executed for a sum of Rs.21,000/- with interest at 24%. In the plaint, the plaintiff has claimed interest at the rate of 18% per annum from the date of promissory note. The case of the plaintiff is that for the purpose of business, Shanmugham borrowed the amount.

2. The defendants contested the suit. They contended that Ext.A1 is not a genuine document. It is stated that Ext.A1 might have been fabricated by imitating the signature of Shanmugham in another

promissory note executed by him in 1986 at the time when he had taken loan from the plaintiff. It is stated that the loan taken in 1986 was repaid with interest in 1987. The contention of the defendant is that plaintiff demanded a further sum of Rs.7,000/- towards interest in respect of the previous transaction and that Shanmugham did not agree to pay the same. According to the defendants, Ext.A1 promissory note was fabricated in such circumstances.

3. Before the trial court, the plaintiff was examined as PW1 and another witness, who claims that he had taken Ext.A2 letter to Shanmugham, was examined as PW2. The first defendant was examined as DW1. To prove that the signature in Ext.A1 is not that of Shanmugham, Ext.B1 passport of Shanmugham was produced by the defendants. The plaintiff relied on Ext.A2 letter which was allegedly written by him to Shanmugham on 11.8.1988, demanding interest of Rs.4,925/- towards the loan transaction as per Ext.A1. On the reverse of Ext.A2, there is an endorsement that half of the

interest would be paid on the next Tuesday. Reference is made in Ext.A2 about a typewriter given by the plaintiff to the defendants. In the endorsement on Ext.A2, it is stated that the typewriter was being returned to the plaintiff. The endorsement is allegedly signed by Shanmugham. The signature of Shanmugham in Ext.A2 was denied by the defendants. PW2 Krishnan Kutty stated in evidence that he took Ext.A2 letter to Shanmugham and Shanmugham wrote and signed the endorsement on Ext.A2. The evidence of PW1 would indicate that there is no witness to Ext.A1 transaction. Nobody was present at the time of advancing the amount and nobody saw Shanmugham putting his signature in Ext.A1 promissory note. The plaintiff is admittedly a money lender. Ext.A1 is a printed form of promissory note. There is no independent evidence to prove Ext.A1 and the signature of Shanmugham therein, except the interested testimony of PW1.

4. The trial court compared the signature in Ext.A1 and A2 with the admitted signature of Shanmugham

in Ext.B1 passport and held thus:

> "... I find that Ext.B1 is the passport of Shanmughom and the signature in it is his genuine signature. This signature in Ext.A1 is no way resembles with the signature in Ext.B1. Whereas in Ext.B1, the letter Shanmughan in his name is easily readable, the letter `h' alone is readable in Ext.A1. Instead of the next letter `a' seen in Ext.B1, A1 has the letter resembling `e' in its place., and after that in `m' is also not having the natural flow or style found in Ext.B1 signature. After this letter there are some up and down lines connected in a zigzag manner in the place of these letters 'gha' found in Ext.B1. The beginning of the signature in Ext.A1 also differently giving it an imitated look. It is true that Ext.B1(a) signature is signed in the year 1978 whereas the disputed signature is of 1987. It is common knowledge that after lapse of years there will be some change in the writing in the signature. Still the natural style and flow will not change much. Even though there is no expert opinion which is not attempted by the plaintiff as an aid, this Court can still compare those signatures. If there was expert opinion that would have been of much help in making the comparison. However, for the reason stated I am unable to find any resemblance with the two signatures. The next signature attributed to the deceased by the plaintiff in Ext.A2(a) seems to be an unsuccessful imitation of the signature in Ext.A1. The zigzag curves at the place of the letter 'gh' occurring in the real signature is seen in Ext.A2(a) much less successfully imitated. As regards A2(a) the forgery cannot escape even a cursory look. Further the amount of Rs.1000/- written in words in Malayalam in Ext.A1 does not resemble the handwriting in Ext.A2(a). I have the least doubt that Ext.A2(a) as well as Ext.A1 are fabricated false evidence."

5. I am in full agreement with the reasons stated and the finding arrived at by the court below. Apart from the reasons stated by the court below, on a perusal of Ext.A1, it is seen that there is overwriting on the date at two places in Ext.A1. It is in different ink. The rate of interest is also seen written in different ink. The suit was filed on 19.11.1990. The date and month in Ext.A1 are corrected. It would appear that the month originally shown was 1 and it was later corrected as 11. I am of the view that there is material alteration of Ext.A1 which disentitles the plaintiff to get a decree. Therefore, apart from the reasons stated by the court below to arrive at the conclusion that Ext.A1 is not a genuine document, I am also of the view that Ext.A1 was materially altered disentitling the plaintiff to get a decree.

6. In Ext.A2 letter, interest is claimed at Rs.4,925/-. It is admitted by PW1 that interest would not come to Rs.4,925/- if the interest shown in Ext.A1

is taken as correct. The trial court has calculated interest at the rate of 24% and stated that the interest as on the date of Ext.A2 would be only Rs.3,780/- and not Rs.4,925/-. PW1 was cross examined touching upon the question whether he was maintaining accounts for his business transaction. He stated that records were available, but they were with the Income-tax Department at the time of giving evidence. The court below held that the material documents were suppressed by the plaintiff. The learned counsel for the appellant submitted that the account books were produced by the plaintiff before the court below and the court below was not right in holding that the account books were suppressed. The records made available before this Court do not contain any account books. I do not think that a remand of the case would be justified on this ground. Even assuming that the account books were produced by the plaintiff, on the finding that Exts.A1 and A2 are not genuine, the suit must fail. Therefore, consideration of the account books of the plaintiff would not advance the case of

the plaintiff. The suit is of the year 1990 and the appeal was filed as early as in 1994. There is no justification for remanding the case to the trial court.

7. The trial court disbelieved the evidence of PW2. I have carefully gone through the evidence of PW2. His evidence would indicate that he is a dependent of PW1. The trial court was fully justified in holding that the evidence of PW2 cannot be relied on.

No grounds are made out for interference in the appeal. The appeal is devoid of merit and it is accordingly dismissed, however, without any order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

A.S.NO. 614 OF 1994

JUDGMENT

1st February, 2007